

DEC 22 2010

Electricity, Delivery and Energy Reliability

December 22, 2010

Mr. Anthony J. Como  
Director, Permitting and Siting  
Office of Electricity Delivery and Energy Reliability (OE-20)  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: TransAlta Energy Marketing (U.S.) Inc.  
Application for Authorization to Transmit Electric Energy to Canada

**DELIVERED BY OVERNIGHT MAIL**

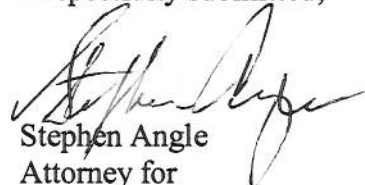
Dear Mr. Como:

Enclosed for filing on behalf of TransAlta Energy Marketing (U.S.) Inc. are:

1. an original and two (2) conformed copies of the Application of TransAlta Energy Marketing (U.S.) Inc. for Authorization to Transmit Electric Energy to Canada and related exhibits ("Application"); and
2. a check in the amount of \$500.00 made payable to the Treasurer of the United States, as required by 10 C.F.R. § 205.309 (2010). A copy of the Application is being served contemporaneously upon the Federal Energy Regulatory Commission, as required by 10 C.F.R. § 205.309 (2010).

If you have any questions regarding this filing, or if you require additional information, please contact me at 202-639-6565.

Respectfully submitted,



Stephen Angle  
Attorney for

TransAlta Energy Marketing (U.S.) Inc.

cc: Federal Energy Regulatory Commission

UNITED STATES OF AMERICA  
BEFORE THE DEPARTMENT OF ENERGY  
OFFICE OF ELECTRIC DELIVERY AND ENERGY RELIABILITY

TransAlta Energy Marketing (U.S.) Inc.     )

Docket No. EA-\_\_\_\_\_

**APPLICATION OF TRANSALTA ENERGY MARKETING (U.S.) INC.  
FOR AUTHORIZATION  
TO TRANSMIT ELECTRIC ENERGY TO CANADA**

Pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824(e) (2006), and Part 205, Subpart W of the U.S. Department of Energy's regulations, 10 C.F.R. § 205.300, *et seq.* (2010), TransAlta Energy Marketing (U.S.) Inc. ("TEMUS" or "Applicant") hereby requests renewal of its authorization to transmit electric energy from the United States to Canada for a period of five years. In support of its request, TEMUS states as follows:

**I. DESCRIPTION OF THE APPLICANT**

The exact legal name of the Applicant is TransAlta Energy Marketing (U.S.) Inc. TEMUS is a Delaware corporation with its principal place of business at 913 Big Hanaford Road, Centralia, Washington 98531-9111, and is currently authorized to do business in Washington, Delaware, Oregon, New York, Maryland, and the District of Columbia. On August 31, 1999, DOE issued Order No. EA-216 authorizing TEMUS to transmit electric energy from the United States to Canada as a power marketer.<sup>1</sup> DOE renewed the TEMUS authorization to export electric energy to Canada for a five-year

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<sup>1</sup> *TransAlta Energy Marketing (U.S.) Inc.*, No. EA-216 (August 31, 1999).

term on August 16, 2001, in Order No. EA-216-A,<sup>2</sup> and again on May 17, 2006, in Order No. EA-216-B.<sup>3</sup> TEMUS' current authorization to export electric energy to Canada expires on May 17, 2011.

TEMUS is a power marketer with authorization from the Federal Energy Regulatory Commission ("FERC") to market electric energy and capacity at wholesale pursuant to market-based rate authorization granted by letter order issued on June 25, 1998, in FERC Docket No. ER98-3184-000. TEMUS is an indirect subsidiary of TransAlta Corporation ("TAC"), a publicly traded Canadian corporation with headquarters in Calgary, Alberta.

TAC indirectly owns TransAlta Centralia Generation LLC ("TCG"), a Washington limited liability company with offices in Centralia, Washington. TCG is an exempt wholesale generator pursuant to a letter order issued by FERC on February 25, 2000, in FERC Docket No. EG00-49-000, and TCG holds market-based sales authority as granted December 16, 1999 in FERC Docket No. ER00-494-000. TAC also indirectly owns TransAlta Energy Marketing Corporation, which was granted market-based rate authority by FERC on April 30, 2009, in FERC Docket No. ER09-884-000. None of TEMUS' affiliates currently holds or is seeking authorization to export electricity to Canada.

## II. COMMUNICATIONS

Communications regarding this application should be addressed to the following:

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<sup>2</sup> *TransAlta Energy Marketing (U.S.) Inc.*, No. EA-216-A (August 16, 2001).

<sup>3</sup> *TransAlta Energy Marketing (U.S.) Inc.*, No. EA-216-B (May 17, 2006) ("Order No. EA-216-B").



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### **III. JURISDICTION**

The Department of Energy is the only governmental agency that has authority over this application. As discussed above, FERC has jurisdiction over TEMUS' sale of electric energy and capacity in interstate commerce in the United States, as well as over certain activities of TEMUS' affiliates. However, the exports of electricity from the United States to Canada are foreign as opposed to interstate commerce and are thus under the jurisdiction of the Department of Energy.

### **IV. DESCRIPTION OF TRANSMISSION FACILITIES**

TEMUS currently exports electricity, and seeks authorization to continue to export electricity, over existing transmission interconnections between the United States and Canada. TEMUS has provided in Exhibit C hereto the location and description of the transmission facilities through which the electric energy may be delivered into Canada. Exhibit C includes the name of the owner of each such transmission facility and the corresponding Presidential Permit number. The transmission facilities described in Exhibit C are the same facilities over which TEMUS was authorized to export electric energy in Order No. EA-216-B.

## V. TECHNICAL DISCUSSION OF PROPOSAL

Under Section 202(e) of the FPA, before DOE grants authorization to export electricity, it first evaluates the impact of the export on the reliability of the U.S. electric system. DOE approves an application to export electricity unless it finds that “the proposed transmission would impair the sufficiency of electric supply within the United States,” or that “the proposed transmission ... would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.” 16 U.S.C. § 824(e). In applying these two criteria to requests for export authorizations submitted by electric power marketers such as TEMUS, DOE has declined to follow a rigid application of the information filing requirements set forth in DOE’s regulations and instead has used a flexible approach to account for the unique nature of power marketers.<sup>4</sup>

TEMUS does not own any electric generation or transmission facilities and, as a power marketer, does not hold a franchise or service territory. Moreover, none of TEMUS’ affiliates owns any electric transmission facilities other than generator interconnection facilities and TEMUS is not affiliated with an entity that holds a franchise or service territory. Thus, TEMUS has no “system” of its own on which power exports could have a reliability or stability impact.

Specifically, with respect to the first criterion used to analyze applications to export electricity, TEMUS is a power marketer that will export electricity purchased from electric utilities, federal power marketing agencies, qualifying cogeneration and small

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<sup>4</sup> See, e.g., *Morgan Stanley Capital Group Inc.*, No. EA-185-A-CN (Aug. 14, 2000); *NorAm Energy Servs., Inc.*, No. EA-105-CN (Aug. 16, 1996); *MidCon Power Servs. Corp.*, No. EA-114 (July 15, 1996); *USGen Power Servs.*, No. EA-112 (June 27, 1996); *CNG Power Servs. Corp.*, No. EA-110 (June 20, 1996); *Destec Power Servs., Inc.*, No. EA-113 (May 31, 1996).

power production facilities, independent power producers, and other sellers. As DOE has recognized, the “power purchased by a power marketer is, by definition, surplus to the needs of the selling entities” and “[w]ith no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export.”<sup>5</sup> Thus, an export of electricity “occurring under such circumstances” would not impair the sufficiency of electric supply within the United States.<sup>6</sup>

DOE has interpreted the second criterion used to analyze applications to export electricity “primarily as an issue of the operational reliability of the domestic electric transmission system.”<sup>7</sup> As noted above, TEMUS does not own or control any electric power supply system in the United States. Additionally, in making the necessary commercial arrangements and obtaining transmission capacity necessary to export electricity under the authorization requested herein, TEMUS will comply with existing industry procedures for obtaining transmission capacity, including reserving transmission service in accordance with FERC’s Open-Access Same-Time Information System (“OASIS”) and scheduling delivery of the export with the appropriate Independent System Operator(s) and/or control areas. As required under the conditions of TEMUS’ current export authorization, TEMUS will conduct all operations pursuant to the requested authorization in accordance with the provisions of the FPA and pertinent rules, regulations, and orders adopted or issued thereunder, including the comparable open access provisions of FERC Order No. 888, as amended. Compliance with these statutes,

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<sup>5</sup> Order No. EA-216-B at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*



rules, regulations, and orders will ensure that the proposed transmission will not impede or tend to impede the regional coordination of electric utility planning or operation.

## **VI. PROCEDURAL MATTERS**

If required by DOE, TEMUS agrees to abide by general conditions consistent with those set forth in TEMUS' existing DOE electricity export authorizations, as applicable.<sup>8</sup> TEMUS respectfully submits that it satisfies the requirements of Section 202(e) of the FPA and Part 205, Subpart W of DOE's regulations applicable to applications for authorization to transmit electric energy from the United States to Canada. TEMUS respectfully requests waiver of the requirement to file this application six months in advance of the authorization requested herein to allow issuance of an order renewing TEMUS' authorization to transmit electric energy to Canada on or before May 17, 2010, when TEMUS' current authorization expires. TEMUS also requests any additional waivers deemed necessary for DOE to issue the order requested herein.

## **VII. EXHIBITS**

The following exhibits identified in the DOE's regulations are attached hereto as follows:

- Exhibit A – (Not Applicable)
- Exhibit B – Legal Opinion of TEMUS' Counsel and Officer's Certificate
- Exhibit C – Transmission system information (submitted in lieu of maps)
- Exhibit D – (Not Applicable)
- Exhibit E – (Not Applicable)
- Exhibit F – (Not Applicable)
- Exhibit G – Verification

To the extent necessary, TEMUS requests a waiver of the requirement to provide the exhibits that are not applicable to this application, as noted above.

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<sup>8</sup> *Id.* at 5–10.

## VIII. CONCLUSION

For the foregoing reasons, TEMUS respectfully requests that the Department of Energy issue an order renewing TEMUS' authorization to transmit electric energy to Canada for a period of five years, effective upon issuance of the order but no later than May 17, 2011.

Respectfully submitted,



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Counsel for TransAlta Energy  
Marketing (U.S.) Inc.

December 22, 2010



## **EXHIBIT B**

Opinion of Legal Counsel and Officer's Certificate

December 21, 2010

Mr. Anthony J. Como  
Director, Permitting and Siting  
Office of Electricity Delivery and Energy Reliability (OE-20)  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: Application by TransAlta Energy Marketing (U.S.) Inc. for Authorization to Transmit Electric Energy to Canada

Dear Mr. Como:

We have acted as special counsel to TransAlta Energy Marketing (U.S.) Inc., a Delaware corporation (the "Company"), in connection with the Company's December 2010 application to the United States Department of Energy for renewal of its authorization to transmit electric energy to Canada ("Application"), which was originally granted in Order No. EA-216 and renewed by Order Nos. EA-216-A and EA-216-B. We are providing this opinion pursuant to 10 C.F.R. § 205.303(b) (2010).

In our capacity as counsel to the Company, and for purposes of rendering the opinions set forth in this letter, we have examined the following documents (the "Documents"):

1. a certified copy, dated May 15, 1998, of the Certificate of Incorporation of the Company;
2. a good standing certificate for the Company, dated December 17, 2010, issued by the Office of the Secretary of State, State of Delaware;
3. an Officer's Certificate dated December 16, 2010, of the Company, a copy of which is attached hereto; and
4. the Application (including the Verification) by the Company dated December 22, 2010).

We have assumed the genuineness of all signatures and the authenticity, accuracy and completeness of all Documents submitted to us as originals, and that such Documents have

not been amended or modified. We have also assumed that all Documents submitted to us as copies conform to the originals of such Documents and we have assumed the authenticity of all such Documents. We note that we have undertaken no investigation or verification of any of the matters set forth herein beyond obtaining and examining such Documents and that we have not been hired by the Company to undertake any further investigations or verification in regard to the Application or the opinions or statements set forth in this letter.

Based solely upon, subject to, and in reliance upon the foregoing and the additional assumptions, qualifications, limitations and exceptions set forth below, we are of the opinion that, as of the date hereof:

1. The Company is a corporation, duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

2. The Company has within its corporate powers the importation and exportation of electric energy as proposed in the Application.

In addition to the assumptions, qualifications, limitations and exceptions set forth above, the opinions set forth in this letter are also subject to the following assumptions, qualifications, limitations and exceptions:

(i) we have assumed that all statements of fact contained in the Documents are true, correct and complete;

(ii) we have assumed that each natural person executing any of the Documents is legally competent to do so;

(iii) we have assumed that there are no oral or written modifications of or amendments to any of the Documents and there has been no waiver of any provisions thereof, by actions or conduct of the parties or otherwise;

(iv) we express no opinion as to any laws other than the Delaware General Corporation Law, as currently in effect;

(v) this Firm is not licensed to practice law in the State of Delaware, but this firm has researched issues as they pertain to the Delaware General Corporation Law and the opinions expressed herein; and

(vi) we have assumed that it is lawful for the Company to export electric energy as proposed in the Application.



We assume no obligation to supplement this opinion if any applicable laws change after the date hereof or if we become aware of any facts that might change the opinions expressed herein after the date hereof.

The opinions expressed in this letter are solely for the use of the Office of Electricity Delivery and Energy Reliability at the Department of Energy, and these opinions may not be relied on by any other persons or entities or used, copied or otherwise published or disseminated for any other purpose without our prior written approval. The opinions expressed in this letter are limited to the matters set forth in this letter, and no other opinions should be inferred beyond the matters expressly stated. The foregoing opinions are legal opinions only and do not constitute a guaranty or warranty of the matters discussed therein.

Very truly yours,

  
VINSON & ELKINS L.L.P.

**TransAlta Energy Marketing (U.S.) Inc.**

**Officer's Certificate**

The undersigned, Sterling Koch, Vice President, Regulatory & Legal Affairs of TransAlta Energy Marketing (U.S.) Inc., a Delaware corporation (the "Company"), does hereby certify that:

1. I am the duly authorized and acting Vice President, Regulatory and Legal Affairs of the Company.
2. The Company has complied with all state laws and regulatory authorities in connection with the Application of the Company for Authorization to Transmit Electric Energy to Canada.

In witness whereof, the undersigned has duly executed this Officer's Certificate on behalf of the Company this 16 day of December, 2010.

**TransAlta Energy Marketing (U.S.) Inc.,  
a Delaware Corporation**

By:   
Name: Sterling G. Koch  
Title: Vice President, Regulatory & Legal Affairs

## **EXHIBIT C**

### **Transmission System Information**



**International Electric Transmission Facilities for TEMUS Exports**

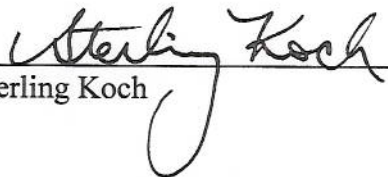
<b>Present Owner</b>	<b>Location</b>	<b>Voltage</b>	<b>Presidential Permit No.</b>
Basin Electric Power Cooperative	Tioga, ND	230-kV	PP-64
Bonneville Power Administration	Blaine, WA Nelway, WA Nelway, WA	2-500-kV 230-kV 230-kV	PP-10 PP-36 PP-46
Eastern Maine Electric Cooperative	Calais, ME	69-kV	PP-32
International Transmission Company	Detroit, MI Marysville, MI St. Claire, MI St. Claire, MI	230-kV 230-kV 230-kV 345-kV	PP-230 PP-230 PP-230 PP-230
Joint Owners of the Highgate Project	Highgate, VT	120-kV	PP-82
Long Sault, Inc.	Massena, NY	2-115-kV	PP-24
Maine Electric Power Company	Houlton, ME	345-kV	PP-43
Maine Public Service Company	Limestone, ME Fort Fairfield, ME	69-kV 69-kV	PP-12 PP-12
Minnesota Power, Inc	International Falls, MN	115-kV	PP-78
Minnkota Power Cooperative	Roseau County, MN	230-kV	PP-61
New York Power Authority	Massena, NY Massena, NY Niagara Falls, NY Devils Hole, NY	765-kV 2-230-kV 2-345-kV 230-kV	PP-56 PP-25 PP-74 PP-30
Niagara Mohawk Power Corp.	Devils Hole, NY	230-kV	PP-190
Northern States Power Company	Red River, ND Roseau County, MN	230-kV 500-kV	PP-45 PP-63
Vermont Electric Power Co.	Derby Line, VT	120-kV	PP-66
Vermont Electric Transmission Co.	Norton, VT	450-kV DC	PP-76

## **EXHIBIT G**


### **Verification**

**VERIFICATION OF STERLING KOCH**

I, Sterling Koch, Vice-President, Regulatory & Legal Affairs of TransAlta Energy Marketing (U.S.) Inc., being duly sworn, hereby attest, under penalty of perjury under the laws of the United States, that I am authorized to provide this verification on behalf of TransAlta Energy Marketing (U.S.) Inc., have knowledge of the matters set forth in the foregoing Application of TransAlta Energy Marketing (U.S.) Inc. for Authorization to Transmit Electric Energy to Canada, and hereby verify that the contents thereof are true, correct, accurate, and complete to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Sterling Koch

SUBSCRIBED AND SWORN TO BEFORE ME this 16 day of December, 2010.

  
\_\_\_\_\_  
Notary Public

**Cairns E. Price**  
**Barrister & Solicitor**